IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. 825

LAURIE J. CARPENTER

v.

ERIE RAILROAD COMPANY

PETITION TO APPEAL

Forma Pauperis, from a Judgment of the District Court of the United States for the District of New Jersey.

LAURIE J. CARPENTER,
Plaintiff in Person,
458 West 35th Street,
New York City, N. Y.

TABLE OF CITATIONS

PETITION TO APPEAL

Judicial Code, Title 28, Section 347(a).

The United States Circuit Court of Appeals for the Third Circuit has allowed an appeal in forma pauperis but affirmed the judgment of the District Court to dismiss for limitations of statute.

The action in the District Court is an attempt to revive a right lost by a motion for a non-suit and order in a New Jersey State Court.

A new action was a matter of right, had the limitations not been exhausted in awaiting the calendar of the State Court.

Limitations would not be considered to have run during pendency in the State Court had the order been labeled "without prejudice".

Your petitioner believes the order in the State Court was without prejudice as that Court granted a rule to show cause on April 30, 1935, upon proof that according to precedent your petitioner was engaged in interstate commerce. The rule had been previously denied at a time when plaintiff was totally without funds.

Your petitioner believes it ought to be against public policy for the Federal Employees Liability Act to operate with fraud and concealment as described in the case of *Bell* v. *Wabash Ry. Co.*, 58 Fed. (2d) 569, 570 (8th C. C. A.).

The motion for a non-suit was granted on a plea that "plaintiff takes his own risk". Under the Federal Employees Liability Act, contributory negligence is not a bar to any claim but the amount recovered may be diminished in proportion thereto (Title 45, Sec. 53).

At the time of the action in the State Court the parties were residents of different States.

Your petitioner believes there would still be a cause of action in negligence if the Federal Employees Liability Act were not in force. There is a precedent of a right to

assume a safe place to work, where executive order was considered to have thrown an employee off guard with no contributory negligence. *McNaney* v. *C. R. I. & P.*, 163 N. W. 506, 137 Minn. 245; *Lassin* v. *Southern Pacific*, 159 Pac. 143, 173.

Your petitioner seeks redress for deprivation of civil rights of law of Act of Congress under Title 28, Section 41, p. 14. This can operate with Title 45, Section 58 of Federal Employees Liability Act, which reads:

> "Nothing in this chapter shall be held to limit the duty or liability of common carriers or impair the rights of their employees under any other act or acts of Congress."

As your petitioner has been totally without funds, an appeal has not been possible. Your petitioner believes that cause of action should not accrue so as to run against limitation of statute in the same manner that it does not accrue in other types of action, where there is not a party in existence capable of suing, such as described in *Collier* v. *Goessling*, 160 Fed. 604, 611, 67 C. C. A. 505.

Copy of the record, complaint and answer is printed in the brief of the appellee to the Third Circuit.

In the appication for appeal in forma pauperis to the Third Circuit your petitioner named lack of hospitalization as a ground for a new cause of action, the statement not being in the complaint.

It is not impossible for a man to be detained fifteen years with a fractured tibia.

From the Index Catalogue of the Library of the Surgeon General's Office, U. S. Army, 1893, is reference to cases of ununited fracture of the tibia. One is to a publication by Tamplin (R. W.) of twenty-four years' standing in London Medical Gazette, 1850. Another of twelve years' standing by Forbes (W. S.), 1879, was in four American publications.

WHEREFORE, your petitioner prays that reinstatement of the right to relief in the District Court be allowed for its just determination.

Respectfully submitted,

LAURIE J. CARPENTER,
Plaintiff in Person,
458 West 35th Street,
New York City, N. Y.

APPENDIX

Opinion of the Circuit Court of Appeals for the Third Circuit

(Filed December 16, 1942)

Before MARIS, JONES and GOODRICH, *Circuit Judges.*

Per Curiam:

In this suit brought by an injured employee against a railroad company under the Federal Employers' Liability Act it appears from the face of the complaint that the plaintiff's cause of action arose more than fourteen years before the suit was commenced. Since compliance with the two years limitation provided by Section 56 of the act is a condition precedent to recovery (Wabash Ry. Co. v. Bridal, 94 F. 2d 117, C. C. A. 8, 1938) and it is, therefore, incumbent upon one suing under the act to allege and prove that his cause of action was brought within the time limited (American R. Co. of Porto Rico v. Coronas, 230 F. 545, C. C. A. 1, 1916) the district court had no alternative but to dismiss the complaint. Its judgment is accordingly affirmed.